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APR 13 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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IN THE MATTER OF:

MM DOCKET NO. 94-10

Clayton, Missouri

24
25

DATE OF CONFERENCE: March 16, 1994

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FREE STATE REPORTING, INC.
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the matter of:)

THE LUTHERN CHURCH/MISSOURI SYNOD)

MM DOCKET NO. 94-10

Clayton, Missouri)
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The above-entitled matter came on for prehearing conference pursuant to Notice before Arthur I. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom 3, on Wednesday, March 16, 1994, at 9:00 a.m.

APPEARANCES:

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On behalf of NAACP (Missouri):

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On behalf of the Chief, Mass Media Bureau:

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1 P R O C E E D I N G S

2 JUDGE STEINBERG: We're on the record now. This is
3 a prehearing conference in MM Docket Number 94-10, involving
4 the applications of the Lutheran Church Missouri Synod, did I
5 pronounce that right?

6 MS. SCHMELTZER: Yes.

7 JUDGE STEINBERG: For renewal of its licenses for
8 Stations KFUE and KFUE-FM, Clayton, Missouri. This case was
9 designated for hearing on February 1st, 1994. By order
10 released February 9th, 1994, the Chief Administrative Law
11 Judge assigned the case to me. I issued an order prior to
12 prehearing conference on February 14th, 1994 and we'll get to
13 those matters later. Let me first take the appearances. For
14 the Lutheran Church Missouri Synod?

15 MS. SCHMELTZER: On behalf of the Lutheran Church
16 Missouri Synod, Richard R. Zaragoza and Katheryn R. Schmeltzer
17 of the firm Fisher, Wayland, Cooper, Leader & Zaragoza, and
18 also we have in the room with us as counsel for the church,
19 Marcia Cranberg of the firm Arnold & Porter.

20 JUDGE STEINBERG: Okay. What, what role is
21 Arnold & Porter going to play in this, if you know?

22 MS. SCHMELTZER: Fisher Wayland is lead counsel at
23 the moment and Arnold & Porter is assistant.

24 JUDGE STEINBERG: For Missouri State Conference or
25 branches of the NAACP and the St. Louis branch of the NAACP?

1 MR. HONIG: David Honig and David McCurdy of the Law
2 Offices of David Honig.

3 JUDGE STEINBERG: Okay. For the Chief, Mass Media
4 Bureau?

5 MR. ZAUNER: Robert A. Zauner and Paulette Laden.

6 JUDGE STEINBERG: Okay. Let me just -- the only
7 pleadings that I have pending before me presently are a motion
8 to modify the hearing issues filed by the NAACP on
9 February 22nd, 1994, and opposition filed by KFUD and the
10 Bureau on March 9th, 1994. By my calculations, a reply is due
11 on March 21st and when the reply is filed I'll, I'll issue a
12 ruling. Okay. Anything further on that?

13 MR. HONIG: Yes, Your Honor. We are going to
14 endeavor to file our reply early because our client feels that
15 the matters in that motion are of the utmost importance to the
16 case and, and depending on the outcome may significantly
17 affect both the scope of discovery and the range of remedies
18 that the Commission may feel is available if we assume for the
19 sake of argument that the misrepresentation issue is resolved
20 and the applicant's favor. My intention this morning is not
21 to argue the merits, but to indicate -- and because I, I don't
22 want anyone to be surprised, that in our reply I've been
23 instructed to incorporate a request for, for leave to file an
24 interlocutory appeal in the event that the ruling is adverse
25 to us. And what I wanted to suggest this morning is that

1 | since I'm sure that the, the matter is of equal importance to
2 | the church, perhaps the parties might be willing to stipulate
3 | that, that if Your Honor agrees, the losing party would be
4 | able to take an interlocutory appeal with Your Honor's
5 | permission.

6 | JUDGE STEINBERG: Well, first of all, you, you're
7 | not -- the rules don't contemplate what you're anticipating
8 | doing. What you ought to do is wait for a ruling, if it's
9 | adverse then you file a request for permission to file an
10 | appeal. Because you're establishing in your reply a whole new
11 | pleading cycle and not only would you get possibly a response
12 | to the request for interlocutory appeal, but motions to strike
13 | it as being unauthorized and that's only going to cause delay.
14 | So, I would suggest that you wait, see what the ruling is and
15 | then if it's adverse to you, promptly file a request for
16 | interlocutory appeal. If everyone agrees -- basically, if
17 | everyone agrees -- stipulates to allow an interlocutory appeal
18 | subject to my appeal, that's one thing, you can do it then.
19 | But I think, I think you would be creating more delay and more
20 | problems and more paper by doing it the way you suggested than
21 | just by separating the matters out. That's what -- I, I can't
22 | prevent you from doing what you want to do. But I'm just
23 | pointing to you -- pointing out to you the problems that will
24 | occur if you do it that way. And --

25 | MR. HONIG: The reason for doing it that way would,

1 | would be to try to save time. But if Your Honor --

2 | JUDGE STEINBERG: It won't.

3 | MR. HONIG: -- if Your Honor feels that it won't
4 | then of course we don't do that. We'll await the ruling.

5 | JUDGE STEINBERG: Yeah, no, I don't think it will
6 | because you'll get motions to strike. You have to have --
7 | you're making a separate request and you should have a
8 | separate pleading for every separate request. And so you'll
9 | get a motion to strike and you'll oppose the motion to strike,
10 | then I'll rule on the motion to strike and I'll probably grant
11 | the motion to strike and then you'll have to start again. So,
12 | I'm glad you brought it up.

13 | MR. HONIG: Thank you.

14 | JUDGE STEINBERG: Because I think it will save time,
15 | you know, if the ruling is adverse to just do everything a
16 | step at a time. I fully realize that the scope of discovery
17 | depends on a ruling on the motion to modify and believe me,
18 | I'm not going to sit on the motion. It'll -- you know, it'll
19 | be ruled on as promptly as I can rule on it, giving it due
20 | consideration. But that doesn't mean that with respect to
21 | discovery you should just wait until you get the ruling
22 | because there's lots you can do before. Okay. Anything more
23 | on that subject?

24 | MR. HONIG: Your Honor, also, I don't know whether
25 | you're intending to get to this, but this morning we, we have,

1 have gotten or are getting, when the secretary arrives at
2 1919, our initial interrogatories and our request for
3 production of documents. I've served the parties by hand this
4 morning, have your set here.

5 JUDGE STEINBERG: Why don't you pass them up and --
6 because I wa going to get to interrogatories because -- let me
7 just -- as a little bit of background. I think on March 1st I
8 was called up by Mr. Zauner on behalf of the other counsel to
9 basically ask if the prehearing conference could be postponed
10 from I believe the 8th till today to give everybody a further
11 opportunity to cooperate on discovery and I said that's fine.
12 And during the course of the conversation I told Mr. Zauner
13 the dates that I -- the procedural dates that I was
14 contemplating including the hearing date. Later -- about a
15 few minutes later -- and Mr. Zauner I think indicated that he
16 was in Ms. Schmeltzer's conference room and that everybody was
17 there -- a few minutes later, I thought that I gave -- I
18 thought that I incorrectly stated one of the dates. So I
19 called back and got everybody in the conference room and I
20 guess I was put on the speaker phone and we have some initial
21 conversations about discovery including interrogatories. You
22 know, that's just background. So, we have discussed
23 interrogatories a little bit. And I think I indicated my
24 preference not to have interrogatories, but we'll talk about
25 that. I just -- I don't like them. I think they're

1 inefficient, but we'll talk about that.

2 MR. HONIG: Your Honor, if I could also just state
3 for the record the certificate of service incorrectly states
4 that service was effected yesterday. The error has been
5 pointed out to me, it's in fact today. We hoped to file this
6 yesterday, we didn't make it.

7 JUDGE STEINBERG: Okay. Just -- I guess you can
8 file a corrected certificate then.

9 MR. HONIG: We will do that.

10 JUDGE STEINBERG: Same thing with the request for
11 production?

12 MR. HONIG: Yes, Your Honor.

13 JUDGE STEINBERG: Anything need clarifying?

14 MR. ZAUNER: Your Honor, just one other point.
15 Yesterday and this morning the Bureau exchanged copies of a
16 draft request for production of documents that we had done
17 with the other parties. We are in the process now -- we're
18 going to -- now we've gotten Mr. Honig's document request
19 we're going to compare and see whether our document request is
20 still necessary or whether a limited version of that can be
21 filed if necessary.

22 JUDGE STEINBERG: Okay.

23 MS. SCHMELTZER: Your Honor, I guess to get the ball
24 rolling here, the Bureau did fax over to us a copy of their
25 motion for production of document yesterday. And we don't

1 have any objections to it other than the date of the license
2 period is plainly erroneous and they've agreed to correct
3 that. We would be happy to work with the Bureau's motion
4 essentially and that we are in agreement on that. I haven't
5 had an opportunity to look over Mr. Honig's, I don't know to
6 what extent it's duplicative of the Bureau's and I don't know
7 to what extent it seeks documents that are not relevant to the
8 issues. But I guess our approach, approach we would like to
9 take is to respond to the Bureau's motion and then look at Mr.
10 Honig's motion secondarily and voice any objections we might
11 have to that. So that we do have a basis for proceeding
12 because we don't want to delay this case.

13 JUDGE STEINBERG: Well, why don't you, why don't you
14 just talk about this among yourselves after the conference
15 and, you know, try to get some cooperation here. Obviously,
16 if the Bureau is requesting the same documents Mr. Honig is
17 requesting you can cross the request out on one of the other
18 of them or whatever. I mean, that's something that you can
19 work out I think. I don't see why I have to get involved in
20 that.

21 MS. SCHMELTZER: That does bring us however to the
22 interrogatories.

23 JUDGE STEINBERG: No, not -- I'm not going to do
24 that yet. I want to -- anything need clarifying first? I
25 have two things. I want you to work on a stipulat-- from my

1 | experience, some certain dates are going to be critical in
2 | this case and one is the dates encompassed by what's called
3 | the renewal year. And the hearing designation order and the
4 | letters that the, that the FCC sent to the licensee seem to
5 | use different dates. Every time they asked about something
6 | the dates were different. And I think obviously the letters
7 | speak for themselves, the responses will speak for themselves.
8 | But I think for the purposes of this hearing we should have
9 | uniform dates for the renewal year and uniform dates for the
10 | renewal period, which is -- my understanding synonymous with
11 | the renewal term. And let me just suggest something. The
12 | renewal year I think would begin October 1st, 1988 and the
13 | question is does it end September 30th, '89 or January 31st,
14 | '90 which is when your license expired? Those are the dates
15 | -- you know, the ending dates are two different dates that I
16 | picked out from the HDO. Then -- I detect confusion. Did I
17 | state something -- did I confuse everybody?

18 | MR. HONIG: Your Honor has a right to be confused.
19 | The dates that are specified in our two motions are the dates
20 | drawn from the relevant Commission rule that defines the
21 | license term by state. Recognizing that the Commission's
22 | letters -- there were four --

23 | JUDGE STEINBERG: There are five letters.

24 | MR. HONIG: Five letters.

25 | JUDGE STEINBERG: Which is another thing. The HDO

1 talks about the third letter and the fourth letter and I read
2 it and I think they're the fourth letter and the fifth letter.
3 So, I mean --

4 MR. HONIG: There was one ministerial letter and
5 there were four substantive --

6 JUDGE STEINBERG: But it's still a letter --

7 MR. HONIG: -- letters, and it is a little hard to
8 parse and what we've done to try to harmonize this is in our
9 document production request, our request number one at page 4
10 asks for all documents of the type requested for the period --

11 JUDGE STEINBERG: I see, '83 through '90.

12 MR. HONIG: For the period for -- which wasn't
13 covered by various of the letters as blanket request it's
14 intended to make sure that for entire license period what the
15 Commission asked for the party will produce.

16 JUDGE STEINBERG: I suspect we may have disagreement
17 on that. Or maybe we won't. But I -- the Commission when
18 they speak of renewal period or renewal term talks about
19 October 1, '86 through October 31, '89 or January 31, '90. I
20 mean -- so I don't really know what dates we have to look at.
21 You know, if they made inquiries concerning these dates and
22 specified an issue concerning these, these dates, can I go
23 beyond those dates? I don't know.

24 MS. SCHMELTZER: This case is a little bit different
25 than say a renewal, a renewal challenge where the renewal

1 applicant is seeking renewal expectancy you could arguably go
2 to the end of the license term, arguably. In this case, we
3 filed our license renewal application in September '89 and it
4 was --

5 JUDGE STEINBERG: September 29th.

6 MS. SCHMELTZER: September 29th and what the NAACP
7 was complaining about is what we did when we -- during that
8 license term that preceded the filing of the license renewal
9 application. So, I think to go beyond that to the remainder
10 of the term is a little bit unfair.

11 JUDGE STEINBERG: Okay. When, when -- what is the
12 beginning of the term? What's the beginning of the term?

13 MS. SCHMELTZER: The beginning of the term would be
14 February --

15 JUDGE STEINBERG: Is that '83?

16 MS. SCHMELTZER: -- '83.

17 JUDGE STEINBERG: Okay.

18 MS. SCHMELTZER: You know, if you want us to go to
19 the end of the term we will. I just -- yeah, I guess it's
20 arguable.

21 JUDGE STEINBERG: What I would -- well, obviously,
22 if you file your application on September 29th, 1989 and you
23 have to present to the Commission your statistics for the
24 preceding year, obviously you can't go to 1990 because you
25 don't know what those are statistics are going to be at the

1 time you file.

2 MS. SCHMELTZER: Right. So, with that caveat we
3 would be happy to go to the end of the term, but, you know,
4 since --

5 JUDGE STEINBERG: Okay. Let me just make a
6 suggestion. I'm not -- do you think you all could work out
7 the meaning of those two terms?

8 MS. SCHMELTZER: License term -- I don't -- I
9 already said to Bob we would be happy to do October -- I'm
10 sorry, February 1, 1983 through January 31, 1990.

11 JUDGE STEINBERG: Okay. Okay. So, that -- would
12 Mr. Honig agree with that?

13 MR. HONIG: I agree with that. But actually there
14 is a very closely related issue that might be appropriate to
15 raise just to notify Your Honor of it. Throughout both of our
16 requests in -- we define license term but -- and we refer in
17 most of the interrogatories and document requests to the
18 material generated during the license term. But there are a
19 few of the interrogatories and document requests which ask for
20 material which came into existence after the license term but
21 was intended to modify or express in writing or articulate or
22 extend policies which existed during the license term. And as
23 to those there may be some disagreement but I would hope that
24 we can work it out.

25 JUDGE STEINBERG: You know, basically documents

1 generated after January 31st, 1990 which reflected policies
2 during the renewal term or during the license term, renewal
3 period, license -- whatever we're going to call it. I guess
4 if there are such things and they reflect or evidence policies
5 that were in effect during a certain period and -- but the
6 documents were created later. I mean, I don't see what's
7 wrong with that. But I don't have any specific objection so I
8 can't -- I'm not going to rule on the vacuum -- but I
9 understand what you're talking about. Okay. So, can we all
10 stipulate that the phrase or renewal period or renewal term
11 will cover February 1, '83 through January 31, 1990?

12 MS. SCHMELTZER: I'm informed that the license
13 actually expires at 3:00 a.m. in the morning and if that's
14 accurate then I guess it should be through February 1, 1990.

15 JUDGE STEINBERG: Okay.

16 MS. SCHMELTZER: Okay?

17 JUDGE STEINBERG: So, it's February 1, '83 through
18 February 1, 1990. Okay. And if -- we wouldn't want to miss
19 any documents created between midnight and 3:00 a.m. Okay.
20 How about renewal -- when I -- renewal year, I think what
21 we're talking about are statistics from the year preceding the
22 filing of the renewal application. Am I right?

23 MS. SCHMELTZER: Can you refer us to just where in
24 the hearing designation order you were looking for that?

25 JUDGE STEINBERG: I don't know. I have notes but

1 unfortunately I didn't coordinate my notes with paragraphs of
2 the HDO. Let me --

3 MR. ZAUNER: Paragraph 12 mentions --

4 JUDGE STEINBERG: Okay. Here we go. The first
5 reference I believe is in paragraph 7. "Licensee claimed to
6 have hired a total of six persons...during the renewal year,"
7 so that's the first reference to renewal year. Then I'm --
8 even though I don't have this in my notes, from my
9 recollection I think the Commission was the one that referred
10 in their letters to various -- tell us what you did between
11 these dates and these dates and the dates kept -- in one
12 instance I remember it was -- it went to October 1st and one
13 instance October 31st. There wasn't much consistency. But is
14 this going to be important?

15 MS. SCHMELTZER: I think it's something that we can
16 work out.

17 JUDGE STEINBERG: Okay.

18 MS. SCHMELTZER: Could probably reach a stipulation
19 prior to the hearing. But I guess at this point in time I'm
20 not in a position to --

21 JUDGE STEINBERG: Okay.

22 MS. SCHMELTZER: -- define it.

23 JUDGE STEINBERG: Okay. So, why don't you all -- if
24 it's not going to be important then who cares? But this was
25 something that I noticed and I thought I should bring up. In

1 another case that I tried, the renewal year -- what they did
2 in the renewal year was important so it was important to have
3 a definition of that. That might not be the case here. So
4 you all work that out. Mr. Honig, you wanted to say
5 something?

6 MR. HONIG: No, I was going to point out that in the
7 renewal application the licensee's understanding of the
8 renewal year is stated. In Section 7 of it it defines it as
9 October 1, 1988 to September 30, 1989. I think that's
10 consistent with Form 396 --

11 JUDGE STEINBERG: Okay.

12 MR. HONIG: -- that had to be filled out and we'd
13 agree to stipulating those dates.

14 MR. ZAUNER: Would you give me those dates again,
15 David?

16 MR. HONIG: October 1, '88 through September 30,
17 '89, the year preceding the filing of the application.

18 JUDGE STEINBERG: That's what my understanding of it
19 was.

20 MR. HONIG: That's right.

21 JUDGE STEINBERG: But somehow the -- another date
22 crept in in the HDO in the discussion of the renewal year.
23 Does any -- do you want to think about that and then --

24 MS. SCHMELTZER: Yes.

25 JUDGE STEINBERG: Okay. So, you all work that out.

1 Now, in my order prior to prehearing conference I directed
2 counsel for the parties to confer and discuss certain matters
3 and to report to me at this conference the results of their
4 meetings. And the first subject was discovery and that's
5 probably going to be the most complex so why don't we do that
6 now? And let me just ask what the status of discovery is.

7 MR. HONIG: Your Honor, we were unable to agree
8 among ourselves on the precise scope of discovery and we
9 therefore simply agreed to disagree. That is, that we -- that
10 the NAACP would file its request for interrogatories and its
11 motion for production of documents which we've done this
12 morning, and the Bureau might conceivably do so. I don't know
13 the church's plans to initiate discovery, if any. We intend
14 to conduct depositions. We've not agreed who would be deposed
15 or where the depositions would be. And one reason is that
16 without knowing the answers to the interrogatories
17 particularly, we don't know who the potential witnesses are.
18 We don't intend to delay noticing depositions. I think it's
19 likely that to expedite the conduct of the depositions
20 themselves that we would exchange written questions, or
21 propound written questions to the church which they would then
22 have I think the rule says 35 days to prepare for. We would
23 conduct the depositions, at least some of them, on those
24 written questions with the understanding that we could then
25 ask follow-up or additional questions. That's the full extent

1 | so far of how we would intend to participate.

2 | JUDGE STEINBERG: Okay. Let me understand that.

3 | Are you proposing depositions upon written interrogatory or
4 | oral depositions with the witnesses there? Maybe I don't
5 | understand.

6 | MR. HONIG: We would propound in advance a list of
7 | the questions that we would propose to ask but then the
8 | witness would be physically there prepared with documents and
9 | answers to those basic questions but we would be physically in
10 | a room with a court reporter as the questions are then asked
11 | and answered.

12 | JUDGE STEINBERG: So that basically you would write
13 | out -- this is an idiotic example but it's suitable for me and
14 | you can draw your own conclusions. You know, you would write
15 | out, "What is your name?" and then, you know, "What is your
16 | address" you know, "How long have you worked at this station?"
17 | and then the witness would be there and, "My name is John Doe,
18 | I live at -- "?

19 | MR. HONIG: But then we could ask --

20 | JUDGE STEINBERG: But then you could ask follow-up
21 | --

22 | MR. HONIG: -- follow-up.

23 | JUDGE STEINBERG: -- "Has your name always been John
24 | Doe?"

25 | MR. HONIG: That's right.

1 JUDGE STEINBERG: Well, okay. Why can't you just
2 get the -- can't get the answers sworn to in advance and then
3 just depose him on the question -- the follow-up questions
4 that you have? And why waste all the time getting -- do you
5 know -- I --

6 MR. HONIG: I have no objection to proceeding that
7 way if, if the church's counsel finds it --

8 JUDGE STEINBERG: Okay. My preference, and I
9 expressed this on the telephone informally on March 1st, was I
10 don't like interrogatories. I find -- we used to use
11 interrogatories extensively. It's before deposing people
12 caught on years and years and years ago. And you have a first
13 set and then you have the second set and then possibly a third
14 set. And then you've got your answers and objections. And
15 then when you get your objections you've got your motions to
16 compel and your opposition to motions to compel. And by the
17 time you're finished with all the interrogatories and the
18 first set and the second set and the third set, you've got 14
19 volumes of paper and not answers from the witness, but answers
20 from the witness's lawyers. It's a lot -- in my opinion, it's
21 a lot easier and a lot more direct to just find out who's -- I
22 have no problem, I think I expressed this on the phone. If
23 you want to use interrogatories to get the names, addresses,
24 telephone numbers of the people that the church knows or that
25 the Bureau knows has -- likely to have discoverable

1 information of relevant facts, fine, that's -- I think that's
2 okay. But to go beyond that, I don't really like that. Now,
3 I'm going to let you repeat, Mr. Honig, on the record here
4 what you told me informally on the telephone about why you
5 believe in a case of this type interrogatories might be more
6 efficient. So, I want you to persuade me to let you use some
7 interrogatories.

8 MR. HONIG: The reason, Your Honor, is that unlike
9 for example a comparative hearing for new facilities where the
10 evidence is -- or virtually all the evidence is going to be on
11 the comparative issues and the basic issues in the possession
12 of the parties are maybe one or two easily-identifiable people
13 like a bank president or a site owner. Here, the identity of
14 potential witnesses is largely unknown probably even to the
15 church at this point. And therefore interrogatories most of
16 which are intended as Your Honor suggested and the wisdom of
17 that in the course of writing them has now become much clearer
18 to me -- interrogatories that mostly try to identify who knows
19 what I think are helpful in that they enable us to much more
20 clearly focus the depositions so that we wouldn't be in a
21 position where we're conducting a deposition, some name of
22 some person with evidence who would need to be deposed comes
23 up in an answer and then you have to have a second set of
24 depositions. I might add, Your Honor, that the new federal
25 civil rules --

1 JUDGE STEINBERG: Rule 33.

2 MR. HONIG: -- which of course aren't binding on the
3 Commission but I think nevertheless do have some normative
4 value which went into effect in December '93 limit the number
5 of interrogatories to 25. The --

6 JUDGE STEINBERG: Including discrete subparts.

7 MR. HONIG: The advisory committee's note to the
8 amendment states that you can't evade the limitation by
9 joining a subpart's question to seek information about
10 discrete subject matters. You can't ask about apples,
11 oranges, bananas and pears, but you can ask about different
12 kinds of bananas in the same question. It says, "However, a
13 question asking about communications of a particular type
14 should be treated as a single interrogatory even though it
15 requests that the time, place, persons present and contents be
16 stated separately for each such communication." Bearing that
17 in mind, we do have different subparts. We hope it meets the
18 spirit of this and we have narrowed it to 24.

19 JUDGE STEINBERG: Let me hear from KFUD and then the
20 Bureau about this.

21 MS. SCHMELTZER: Your Honor, we would like to
22 proceed expeditiously with this case. We're prepared to
23 supply the documents that the Bureau wants. We think that a
24 number of those documents will answer Mr. Honig's concerns as
25 well. We are prepared to -- we will provide lists of

1 prospective witnesses which I thought was what Mr. Honig was
2 going to seek in his initial interrogatory. What we don't
3 want to do is to have to go through lengthy lists of
4 interrogatories and provide all kinds of information which
5 could easily be asked at the deposition because we are going
6 to have depositions in this case I assume. You know, if
7 Mr. Honig doesn't want to have depositions then I can
8 understand answering lengthy interrogatories. But we just
9 think it's very burdensome to have to answer all of these
10 interrogatories and then go through depositions as well.

11 JUDGE STEINBERG: Well, what Mr. Honig expressed to
12 me on the telephone which he didn't say today was from his
13 experience you go into the deposition -- oral deposition and
14 you ask the witness the question and the witness says, "I
15 don't know the answer to that without referring to my
16 records." Is that -- isn't that what you said to me?

17 MR. HONIG: I understand, Your Honor.

18 JUDGE STEINBERG: And that -- and I suggested why
19 don't you exchange with Mrs. Schmeltzer the type of
20 information that you're looking for so that they can have the
21 witness prepared to answer the questions. I'm trying to
22 compromise because I have -- it's probably obvious, but I have
23 an inherent dislike for interrogatories. Usually, in my
24 prehearing orders I say interrogatories will not be permitted,
25 but I don't in a renewal case in which the Bureau participates

1 | because generally the only -- the discovery that they do is
2 | limited to interrogatories because they don't have the funds
3 | for depositions so I didn't include it in this order, in this
4 | order prior to prehearing conference. I'm trying to -- what
5 | I'm trying to do is come up with a compromise that will
6 | satisfy both -- that will satisfy all three parties. And
7 | perhaps -- I'm just speaking off the top of my head -- perhaps
8 | you can use the interrogatories and perhaps Mrs. Schmeltzer
9 | can tell you -- just -- instead of answering the name of the
10 | -- I'm just picking -- the name of the site, the address of
11 | the site, stations using the site, this is interrogatory nine
12 | which I just picked up, why doesn't she just give you in
13 | response just the names, addresses and telephone numbers of
14 | the individuals that possess this information and then you can
15 | depose them and then you can ask them those questions and with
16 | the understanding that in preparing these people for the
17 | depositions Mrs. Schmeltzer will make sure that there is
18 | somebody there that can answer these questions? And that way
19 | you -- if there are objections, state them on the record, you
20 | answer them, you don't answer them, you call me up, I tell you
21 | answer them or I tell you don't answer them, and we can
22 | dispose of a lot of paper. But does everybody follow what I'm
23 | getting at?

24 | MR. HONIG: Yes.

25 | JUDGE STEINBERG: I'm basically trying to give

1 everybody half an apple.

2 MR. HONIG: Your Honor, for some of the
3 interrogatories I would agree that that's an appropriate way
4 to resolve it. But most of the interrogatories essentially
5 ask to identify people and describe information about them
6 that would alert us to the scope of their knowledge as
7 potential witnesses. And our intention was to avoid having
8 that information come out for the first time in a deposition
9 because we can't really afford -- we have very limited
10 resources, and we can't really afford for example to go to St.
11 Louis two or three times to have depositions. Nor can we
12 afford to have lengthy depositions.

13 JUDGE STEINBERG: You're not -- probably not going
14 to have the time either --

15 MR. HONIG: That too, and --

16 JUDGE STEINBERG: -- given the schedule.

17 MR. HONIG: And it's interesting. I've learned from
18 the client that the effect of the new rules on the typical --
19 I think probably the closest analogy would be a trial on an
20 affirmative action recruiting program for minority contractors
21 for a city, for example, where the rules are very similar to
22 2080(b). Or if the scope is expanded, a Title 7 class-action
23 trial. You used to get before these new rules 40, 50, 60
24 pages of interrogatories intended to narrow the depositions
25 and you get huge document production requests. Now what's